

EXHIBIT 1

Part 1

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF TEXAS

CORPUS CHRISTI DIVISION

In re) Case No. 06-20152
)
DAVIS PETROLEUM CORPORATION,)
DAVIS OFFSHORE, L.P., and) Case No. 06-20153
DAVIS PETROLEUM PIPELINE, LLC,)
)
Debtors.) Case No. 06-20154
)
THE NANCY SUE DAVIS TRUST,) Jointly Administered
) under
Plaintiff,) Case No. 06-20152
)
vs.)
) Adv. No.
DAVIS PETROLEUM CORPORATION,) P. No. 06-02062
et al.)
)
Defendants.)

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

(Exhibits Bound Under Separate Cover)

VIDEOTAPED DEPOSITION OF MICHAEL

DIAMOND, taken on behalf of Debtors

at 555 South Flower Street,

50th Floor, Los Angeles, California,

commencing at 9:18 a.m., on

Wednesday, October 17, 2007, before

Paula A. Pyburn, RPR, CLR, CSR

No. 7304.

Pages 1 - 320

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SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re) Case No. 06-20152
)
DAVIS PETROLEUM CORPORATION,)
)
6 DAVIS OFFSHORE, L.P., and) Case No. 06-20153
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7 DAVIS PETROLEUM PIPELINE, LLC,)
)
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8 Debtors.) Case No. 06-20154
)
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9 THE NANCY SUE DAVIS TRUST,) Jointly Administered
) under
10 Plaintiff,) Case No. 06-20152
)
11 vs.)
) Adv. No.
12 DAVIS PETROLEUM CORPORATION,) P. No. 06-02062
)
13 DAVIS OFFSHORE, L.P., DAVIS)
)
14 PETROLEUM PIPELINE, LLC, DAVIS)
)
15 PETROLEUM ACQUISITION CORP.,)
)
16 DAVIS PETROLEUM HOLDINGS CORP.,)
)
17 DAVIS OFFSHORE PARTNERS, LLC,)
)
18 AND ALBERT S. CONLY,)
)
19 LIQUIDATING TRUSTEE UNDER)
)
20 LIQUIDATING TRUST AGREEMENT OF)
)
21 DAVIS PETROLEUM CORPORATION,)
)
22 DAVIS OFFSHORE, L.P. AND DAVIS)
)
23 PETROLEUM PIPELINE, LLC,)
)
24 Defendants.)
25

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1 A. I think the next time I saw Gregg Davis was
2 at a mediation conference that we had where all the
3 family members were present. Gosh, it was after --
4 certainly after the bankruptcy filing. I don't
5 remember exactly when it was. Sometime I think in 09:42
6 late 2006 would be my guess.

7 Q. Let me show you what we'll mark as D-3.

8 (Exhibit D-3 marked.)

9 BY MR. BENNETT:

10 Q. You see this one looks to be an email at 09:43
11 the top there from someone named Rosenfeld at Bryan
12 Cave to various folks, including yourself, April 8,
13 2005.

14 Could you just take a look at D-3, sir,
15 tell us whether, to the best of your knowledge, that 09:43
16 is an email chain that you did receive?

17 A. I -- I have no reason to doubt that I
18 received it.

19 Q. Okay. And this one at the top of that
20 first page, D-3, the email from Rosenfeld, Item 1 09:44
21 there says (reading):

22 We look forward to working with
23 O'Melveny & Meyers, if that firm is
24 hired to serve as the independent
25 counsel for DPCorp. 09:44

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1 A. Yes.

2 Q. Do you see all that?

3 A. Yes.

4 Q. Do you know what that refers to, sir?

5 A. Yes. I guess by this point it was decided 09:44

6 that there was at least going to be exploration of a

7 transaction involving Davis Petroleum and Davis

8 Petroleum needed counsel. And there was discussion

9 among counsel for the family members, at least, as

10 to who that counsel should be. 09:44

11 I recall that O'Melveny was one of the

12 firms that was suggested and -- and eventually it

13 was agreed O'Melveny should be hired.

14 Q. The reference in this one, D-3, is to

15 independent counsel. 09:45

16 Do you know what that refers to?

17 A. Well, independent -- yes. We wanted

18 counsel who was not, as I recall, involved in

19 representing any of the shareholders or the company.

20 Q. That would include Gregg Davis; correct? 09:45

21 A. Yes.

22 Q. Was any part of the purpose of hiring an

23 independent counsel review of any management buyout

24 proposal that might be made?

25 A. Well, eventually, yes. I mean, it would be 09:45

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1 to advise whoever was reviewing that as -- as
2 counsel.

3 Q. Well, maybe I need a second cup of coffee.

4 My -- my point is just -- it's April 2005.

5 The shareholders and their counsel are talking about 09:46
6 hiring independent counsel.

7 At that point was it contemplated that a
8 management buyout proposal was going to come in and
9 independent counsel would review it?

10 A. I think it was contemplated that that might 09:46
11 happen. I'm not sure we knew it would definitely
12 happen.

13 Q. Okay. D-4.

14 (Exhibit D-4 marked.)

15 BY MR. BENNETT: 09:46

16 Q. You'll see this one at the top, D-4, looks
17 to be an email from somebody named Kaddo, K-a-d-d-o,
18 to various folks, including you, April 12, 2005.

19 Could you take a look at D-4 and just tell
20 us whether, to the best of your knowledge, that is 09:47
21 an email that you did receive?

22 A. Yes.

23 Q. And this one says, D-4 (reading):

24 On behalf of Mrs. Davis, I am

25 requesting that counsel for the five 09:47

1 Q. And at that point, May 12, 2005, as far as
2 you know, had approval of the arrangement for
3 Mr. Armel to serve as the special committee been
4 received from the shareholders?

5 A. I don't know. 10:35

6 Q. Looking at the charter on the next page of
7 D-11 --

8 A. Right.

9 Q. -- do you have any knowledge as to whether
10 any changes were made in this form of charter? 10:35

11 A. I have no recollection one way or the
12 other.

13 Q. Okay. As far as you know, this is the
14 charter that was adopted?

15 A. I don't know. 10:35

16 Q. Okay. The reference here to "Specific
17 Responsibilities and Duties," that's broken down
18 into "Equity Transactions," "Financing
19 Transactions," and "Interim Operations," plus "Other
20 Actions." 10:36

21 Do you see all of that?

22 A. I do.

23 Q. Was it your understanding that all of those
24 things were within the scope of Mr. Armel's
25 responsibilities? 10:36

1 A. Yeah. I'm not sure how much I was -- I
2 understood about his operational responsibilities as
3 opposed to his responsibilities for finding the best
4 transaction for the company.

5 MR. BENNETT: Off the record. 10:37

6 THE VIDEO TECHNICIAN: Off the record at
7 10:37.

8 (A discussion was held off the record.)

9 THE VIDEO TECHNICIAN: Back on the record
10 at 10:38. 10:38

11 MR. BENNETT: D-12.

12 (Exhibit D-12 marked.)

13 THE VIDEO TECHNICIAN: Counsel, could we go
14 off the record for a moment. I'm having a problem
15 with my mixer. 10:39

16 MR. BENNETT: Okay.

17 THE VIDEO TECHNICIAN: Off the record at
18 10:38.

19 (A discussion was held off the record.)

20 THE VIDEO TECHNICIAN: Back on the record 10:44
21 at 10:44.

22 BY MR. BENNETT:

23 Q. We're looking at D-12, which looks to be an
24 email from Jack Hardy to various folks, including
25 you, Mr. Diamond, May 19, 2005. 10:44

1 proposal on behalf of the Company,
2 but we thought it would be useful to
3 get it in front of the shareholders
4 prior to our meeting tomorrow.

5 Do you see all of that? 10:55

6 A. Yes.

7 Q. Do you have a recollection of a meeting in
8 which there was a discussion about a proposal from
9 Evercore in or about May 2005?

10 A. I don't have a specific recollection of a 10:56
11 meeting. I know we were discussing another core
12 proposal in or about that time, yes.

13 Q. Okay. And if you could skip in, starting
14 on 47135, the Summary of Proposed Terms.

15 A. Right. 10:56

16 Q. You'll see there under "general" it says
17 (reading):

18 Acquiring shareholder: Davis

19 Petroleum Acquisition Corp., an

20 entity formed by Gregg Davis to 10:56

21 raise new equity...

22 And it goes on.

23 You see all of that?

24 A. Yes.

25 Q. Did you have an understanding that this 10:56

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1 proposal from Evercore was being made in conjunction
2 with a management-led buyout?

3 A. Yes.

4 Q. And this proposal we see in D-16, was it
5 your understanding that this proposal would be
6 evaluated by the other shareholders and by Mr. Armel
7 and his advisors?

10:57

8 A. Yes.

9 Q. And was it your understanding that this
10 proposal from Evercore, what we see in D-16, was
11 subject to consideration against alternative
12 transactions?

10:57

13 A. My assumption was that that's what
14 Mr. Armel would do, yes.

15 Q. Okay. Let me get you into the PowerPoint.
16 Starts on page 47148 of D-16.

10:57

17 Are you there?

18 A. Right.

19 Q. Second page there talks about the
20 advantages of private equity.

10:58

21 A. Right.

22 Q. By the way, this PowerPoint, as far as you
23 know, was prepared by Evercore; is that right?

24 A. Certainly looks like that. I -- I don't
25 recall --

10:58

1 that meeting I remember that Gregg was at. And I
2 also recall Sankaty being a possible source of
3 bridge financing, because there was a need for money
4 to -- to keep the company going, and that Sankaty
5 might -- whether they actually did or not, that they 11:00
6 were a possible source for that kind of financing.

7 Q. Okay. And the reference there to RMCP, to
8 your knowledge, is that Red Mountain Capital
9 Partners?

10 A. I have no idea. 11:01

11 Q. Had you heard of Red Mountain Capital
12 Partners at some point?

13 A. No.

14 Q. Does that name mean anything to you today?

15 A. No. 11:01

16 Q. Did you have an understanding that anyone
17 other than Evercore and Sankaty might have some
18 involvement in this equity financing?

19 A. Nope. I always thought of it as the
20 Evercore deal. 11:01

21 Q. Well, you did have an understanding that
22 Gregg Davis proposed to roll over his equity
23 position in Davis Petroleum; correct?

24 A. Yes. Yes, I did.

25 Q. And after this proposal from Evercore came 11:02

1 in, could you tell us what steps were taken on
2 behalf of the shareholders to evaluate the proposal?

3 A. Well, Mr. Armel and Jefferies -- I -- let
4 me answer that question several ways.

5 First of all, on behalf of the 11:03
6 shareholders, Mr. Armel and Jefferies were acting on
7 their behalf to evaluate it. Whether or not any of
8 the other individual shareholders undertook their
9 own evaluation, I do not know. But we did not,
10 other than to just look at what it was in terms of 11:03
11 the numbers.

12 Q. By "we," you mean Nancy Davis and her --

13 A. Yes.

14 Q. -- representatives?

15 A. I would -- by that I mean myself and 11:03
16 Milbank. We reported what the proposal was, but
17 not -- we didn't undertake any evaluation of it
18 other than that. Other shareholders may have done
19 something different; I don't know.

20 Q. There was nothing to stop you from hiring a 11:03
21 financial advisor to evaluate the proposal; correct?

22 A. No. But we already had Dan Armel. We
23 already had Jefferies. There were at least two
24 corporate lawyers involved representing other
25 shareholders who were looking at this, and we didn't 11:04

1 need to hire -- to get every lawyer in town working
2 on this thing.

3 Q. Okay. D-17.

4 (Exhibit D-17 marked.)

5 BY MR. BENNETT:

11:05

6 Q. Take a look at this one. You'll see it
7 looks to be an email from someone named Festa at
8 O'Melveny, June 8th, 2005, to various folks,
9 including you, Mr. Diamond.

10 Could you take a look at D-17. Just tell
11 us whether, to the best of your knowledge, that is
12 an email and attachment that you did receive?

11:05

13 A. I assume so.

14 Q. Second page there on D-17 starts a list of
15 "Davis Petroleum Corp. Contact List."

11:05

16 Do you see that?

17 A. I do.

18 Q. And just running through the list of names
19 there, are these all folks that, to the best of your
20 knowledge, had some involvement in this transaction?

11:05

21 A. If whoever created this list put them on
22 those -- this list, I assume they did, but I -- I
23 don't know if I ever looked at the list. I --
24 certainly would not have been my practice to look at
25 a contact list except to make sure my name was on

11:06

1 it.

2 Q. Okay. If there was any question as to who
3 needed to receive distributions of information from
4 your firm, Milbank, what was the process for putting
5 together that distribution list?

11:06

6 A. If I wanted to communicate?

7 Q. Yes, sir.

8 A. I already knew who I was communicating
9 with, who was -- which were the lawyers for the
10 other shareholders and O'Melveny. I didn't -- I --
11 I mean, the purpose of a contact list is if you need
12 to find somebody's phone number -- at least in my
13 view, if I need to find somebody's phone number, I
14 have now someplace to look for it.

11:06

15 But I didn't look at a contact list just
16 telling me who I needed to communicate with. I
17 already knew who that group was.

11:06

18 Q. Okay. Well, on --

19 A. I don't know when this was.

20 Q. On --

11:07

21 A. June.

22 Q. -- the third page, 6573 of D-17 --

23 A. Right.

24 Q. -- you will see there a name, Willem

25 Mesdag.

11:07

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1 A. I see that.

2 Q. Do you know who that person is?

3 A. I know the name. I've heard the name
4 before.

5 Q. When did you first hear the name? 11:07

6 A. The only time I heard the name was in a
7 conversation I recall with a lawyer for one of the
8 other shareholders.

9 Q. When was that?

10 A. I can't tell you. I think it was at -- 11:07
11 in -- it was after the first deal didn't go and when
12 we were either thinking about -- I think it was when
13 we were thinking about a -- a prepack bankruptcy.

14 THE REPORTER: Pre what?

15 THE WITNESS: Prepack, prepackaged 11:08
16 bankruptcy proposal. So that would have been, I
17 guess, in early 2006.

18 BY MR. BENNETT:

19 Q. What was discussed about Mr. Mesdag?

20 A. I just recall a conversation in -- in which 11:08
21 Jerry Coben said that Mr. Mesdag had come to see
22 him, and he raised the question, who is this guy?

23 And it was on a shareholder lawyer
24 conference call and nobody seemed to have a very
25 good idea about who he was and the -- you know, 11:08

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1 there was really no further discussion. It was
2 just -- you know, was somebody who was trying to
3 figure out what was going on with the deal. That
4 was the sense that I got.

5 Q. And what steps, if any, were taken to 11:09
6 determine what Mr. Mesdag's role was?

7 A. I don't know. I didn't take it.

8 Q. There's reference on that page, 6573 of
9 D-17, again, under Mr. Mesdag's heading there, it
10 says (reading): 11:09

11 Financial Advisor re:

12 Management Recap.

13 Do you see that?

14 A. I do.

15 Q. Did you have some understanding that Gregg 11:09
16 Davis had a financial advisor regarding a management
17 recap proposal?

18 A. I -- I don't think I had an understanding
19 one way or the other whether he did or he didn't.

20 Q. Did you have some reason to think that 11:09
21 Gregg Davis was proceeding to make a proposal to buy
22 out the equity of the company without a financial
23 advisor?

24 A. I don't think I ever really thought about
25 it one way or the other. 11:10

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1 A. I don't even think we thought about it in
2 terms of claims. It was just a question of we would
3 sit down at some point and figure out a fair
4 allocation of the family assets and how they would
5 be distributed to family members, and in that 11:35
6 discussion there might be some issues that might be
7 raised. We never got that specific.

8 Q. Okay. Item 4, if you go to page 2 of D-19,
9 Mr. Shapiro writes in particular (reading):

10 Beginning in November 2004,
11 Gregg Davis represented that he
12 would undertake to "monetize" DPC,
13 which Ms. Raynes understood to mean
14 that he would seek a buyer for the
15 company. In fact, it appears that 11:36
16 Mr. Davis has investigated only
17 financing for a management buyout,
18 which would permit him to retain his
19 management position, inflated
20 salary, and other perquisites, and 11:36
21 equity stake. In failing to seek
22 out a buyer for the entire company,
23 or one that would replace current
24 officers with more effective
25 management, Gregg Davis has placed 11:36

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1 his personal interests ahead of the
2 interests of the company and the
3 other shareholders.

4 Do you see all of that?

5 A. Yes.

11:36

6 Q. And did you take any steps to look into
7 that specific allegation?

8 A. No. Because at this point in time, that
9 is, the time of this letter, we had somebody in
10 place who's -- who I understand was going to seek
11 out other ways to maximize value. So that whether
12 or not this was accurate, it was irrelevant at this
13 time.

11:37

14 Q. Irrelevant in the sense that there was then
15 a process in place to test the management buyout
16 proposal against other possibilities?

11:37

17 A. Yeah. And seek out other buyers and find
18 other -- other possible transactions, yes.

19 Q. Did you have any discussion with any of the
20 other shareholder representatives at any time about
21 the allegations that were made in this letter from
22 Mr. Shapiro, D-19?

11:37

23 A. I don't recall any discussions, no.

24 Q. Do you have any knowledge of any
25 investigation that was undertaken by any of the

11:38

1 A. They had raised issues like this, yes, in
2 that letter that you showed me earlier, that's
3 correct.

4 Q. Okay. Get you to the next page there,
5 7- -- well, sorry. Not the next page -- 72. We're 13:18
6 looking at D-26, paragraph 122q, and it says
7 (reading):

8 Since Marvin's death, Gregg has
9 pursued a partial sale of Davis
10 Petroleum that would sell equity in 13:18
11 the company for less than its actual
12 value, while preserving his
13 positions as President and Director,
14 contrary to the best interests of
15 Patricia, her trust, and the 13:18
16 company, actions that he knows to be
17 a breach of his fiduciary duties to
18 Patricia and her trust.
19 Do you see all of that?

20 A. Yes. 13:19

21 Q. Do you know of any investigation that was
22 done on behalf of any of the shareholders with
23 regard to that allegation?

24 A. Well, yeah. I mean, that's what we had
25 Armel and First Boston to do, was to make sure that 13:19

1 we weren't selling the company for less than its
2 value.

3 Q. You mean Jefferies?

4 A. Jefferies. I'm sorry. What did I say?

5 Q. First Boston. 13:19

6 A. I'm sorry. Investment bankers all look
7 alike.

8 Q. Well, what steps do you know of that were
9 taken to investigate that allegation?

10 A. I don't -- I don't know that anybody took 13:19
11 any steps to investigate this allegation because --
12 and -- I'm sorry.

13 What I meant to say -- what I meant to say
14 was that we were -- we were at the time pursuing the
15 transaction to maximize value, and so we were 13:19
16 looking for a deal that was getting -- getting full
17 value for the company.

18 So whether Gregg had pursued a partial sale
19 to sell the company at less than its value was not
20 something we looked at. We were trying to -- we 13:20
21 were hopefully pursuing a sale that would get us
22 full value or more for the company.

23 Q. Let me get you to page 134 on D-26, the
24 Complaint.

25 A. Isn't it wonderful how the federal courts 13:20

1 interest, but she wanted to retain an interest in
2 the company.

3 Q. Ultimately did that position change?

4 A. I don't believe so.

5 Q. Okay. Next page, 37 on D-35, the letter 14:19
6 from Mr. Hiltz to Mr. Armel.

7 Are you there?

8 A. Yes.

9 Q. Top of the page, first paragraph at the end
10 there says (reading): 14:19

11 We intend to partner in this
12 transaction with Sankaty Advisors,
13 LLC and Red Mountain Capital
14 Partners, although our offer is not
15 contingent on their participation. 14:20
16 Do you see all of that?

17 A. I do.

18 Q. And was there some discussion among the
19 shareholder representatives about this partnering
20 between Evercore and other investors? 14:20

21 A. I don't recall any, no.

22 Q. Was there ever, to your knowledge, any
23 inquiry by any of the shareholder representatives as
24 to who would be the participants in the Evercore
25 investment? 14:20

1 the ability to leave in or roll over some of their
2 equity interest if they -- in -- in the Evercore
3 proposal.

4 Q. Okay. Second item on that list from
5 Mr. Hardy, D-37 (reading):

14:48

6 Does any shareholder find the
7 Evercore proposal to be unacceptable
8 and know now that he or she will not
9 voluntarily participate in a
10 transaction on substantially the
11 terms set forth in that proposal?
12 You see that?

14:48

13 A. Yes.

14 Q. Was there some discussion with the
15 shareholder representatives on that subject?

14:48

16 A. I -- I think -- my recollection is they
17 just wanted to know before we entered into an
18 exclusivity arrangement whether anybody was already
19 of the view that there was no way they were going to
20 do the deal.

14:48

21 Q. Did anybody express that view?

22 A. No. I don't believe so.

23 Q. And then the -- the third item there, D-37,
24 Mr. Hardy's email, October 28, 2005 (reading):

25 If Dan Armel determines to

14:48

1 proceed with the Evercore
2 transaction without obtaining a
3 "fairness opinion" from an
4 investment bank or valuation expert,
5 is there any shareholder who would
6 not execute an appropriate release
7 of Armel with respect to his
8 activities as the sole member of a
9 Special Committee?

14:49

10 You see that?

14:49

11 A. Yes.

12 Q. Do you know what that refers to?

13 A. I recall a discussion -- Jefferies, for --
14 for reasons I don't remember, was no longer in the
15 deal. And so the question was, would we -- should
16 we invest whatever it would take to get a fairness
17 opinion? Because Dan was reluctant to go forward
18 and approve the deal without that unless the
19 shareholders would release him.

14:49

20 And I do recall we talked about it, and my
21 recollection is that at the end of the day we
22 decided that we would do so. I don't recall the
23 specifics. I'm trying to remember the specifics of
24 the discussion.

14:49

25 I think -- I think we felt that at this

14:50

1 point, once again, Armel and -- and Jefferies had
2 been at it for several months, and this was, we were
3 told, the best deal on the table. So it -- it
4 was -- the fairness opinion to the shareholders was
5 not that critical. I think that's sort of our 14:50
6 reasoning here. And we figured it wasn't worth the
7 money to go out and find somebody else to give a
8 fairness opinion at this point.

9 Q. Did you express that view?

10 A. I -- my rec- -- my recollection is that I 14:50
11 followed the lead of the corporate lawyers who were
12 involved in this deal since we were not expending
13 corporate resources in -- in -- in dealing with the
14 transaction --

15 Q. When you're talking about -- 14:51

16 A. -- with Milbank Tweed.

17 Q. Okay. When you're talking about corporate
18 lawyers, you're talking about the lawyers for some
19 of the other shareholders?

20 A. And O'Melveny, yes. 14:51

21 Q. Did you form a view as to the competence of
22 those other lawyers?

23 A. Well, I -- I felt Jack Hardy was a
24 competent corporate lawyer. Jerry Coben is one of
25 the most competent corporate lawyers I know. And I 14:51

1 Q. Which meant --

2 THE REPORTER: Our what?

3 THE WITNESS: Bank agreements. Sorry.

4 BY MR. BENNETT:

5 Q. Which meant that the bank could declare 15:45
6 default at any point; correct?

7 A. I guess.

8 MR. STEINBERG: Objection to form.

9 THE WITNESS: Depending on what the
10 agreement said, I guess they could declare a 15:45
11 default. What the result of that would be, I don't
12 remember if I ever knew.

13 BY MR. BENNETT:

14 Q. Okay. Next item under III(B) is "Cash
15 Flow," and it says (reading): 15:45

16 Have enough cash to last until
17 approximately January 20.

18 Do you know what that refers to?

19 MR. STEINBERG: Objection as to form.

20 THE WITNESS: What I would have taken from 15:45
21 that is exactly what it says. We were running out
22 of cash, but we had enough to go through
23 January 20th.

24 BY MR. BENNETT:

25 Q. Did you have an understanding that, in 15:45

1 fact, the company in January 2006 was in a serious
2 cash flow problem situation?

3 MR. STEINBERG: Objection as to form.

4 THE WITNESS: Yes, I did.

5 BY MR. BENNETT:

15:46

6 Q. Okay. Let me show you D-48.

7 (Exhibit D-48 marked.)

8 BY MR. BENNETT:

9 Q. You'll see this one appears to be a letter
10 from Daniel Armel to Ciara Burnham at Evercore,
11 January 9, 2006. And you'll see it's got an
12 attachment which says, "Annex, Response to Modified
13 Proposal."

15:48

14 Could you take a look this one and just
15 tell us whether, to the best of your knowledge, this
16 is a letter and attachment that you did receive?

15:48

17 A. I don't know whether I received this or
18 received some report of it. I -- I don't know -- I
19 don't know the answer to that.

20 Q. Okay. This one on the front of the first
21 page, D-48, Mr. Armel's letter, January 9, 2006, to
22 Evercore says (reading):

15:48

23 This letter responds to your
24 modified proposal of January 5,
25 2006...

15:48

1 Q. And do you recall that there was such a
2 discussion among the shareholder representatives?

3 A. I -- I don't recall whether there was or
4 there wasn't, but --

5 Q. January 31, 2006, was the tentative date 16:48
6 for closing of the --

7 A. Yes --

8 Q. -- transaction?

9 A. -- it was.

10 Q. And there was recognition, at least, as of 16:48
11 this point, January 26, that the transaction might,
12 in fact, not close; correct?

13 A. That's correct.

14 Q. And was there some discussion among the
15 shareholders about what the ramifications of that 16:49
16 would be?

17 A. Yes. I'm sure there was. I just don't
18 remember what it was.

19 Q. Was there any discussion about the
20 possibility that failure to close a transaction 16:49
21 would actually harm the company, Davis Petroleum?

22 A. Yes.

23 Q. And in what way?

24 A. Well, the company was out of money and was
25 in default on its loan. So it was in a very serious 16:49

1 condition if we couldn't do a deal that would, you
2 know, create some -- share some value. I don't
3 think there was any mystery about that.

4 (Exhibit D-64 marked.)

5 BY MR. BENNETT:

16:50

6 Q. Showing you what we've marked as D-64,
7 you'll see there an email from Jack Hardy to Dan
8 Armel, January 25, 2006, and there's an attachment
9 there from AIG, "Non-Binding Indication Letter."

10 Do you see all that?

16:50

11 A. Yes.

12 Q. You can tell us whether you've seen any of
13 this before.

14 A. I don't recall seeing this.

15 Q. Okay. You'll see the -- the email from
16 Jack Hardy to Dan Armel, January 25, 2006, reads in
17 part (reading):

16:51

18 Dan --

19 Jerry Coben told me today that

20 the family wants to proceed to

16:51

21 get -- looks like rep and --

22 representation and warranty

23 insurance coverage for the Evercore

24 transaction.

25 Do you see that?

16:51

1 Q. And in the course of that voting, Nancy
2 Davis voted no?

3 A. I believe so.

4 Q. And that was based on your view that it was
5 possible to get a better deal than the one that was 18:30
6 being proposed with Evercore?

7 A. Correct.

8 Q. Was there any other basis for that vote?

9 A. No. We just felt the value was -- the
10 value was not what it should have been. 18:30

11 Q. Okay. D-85.

12 (Exhibit D-85 marked.)

13 BY MR. BENNETT:

14 Q. Take a look at this one quickly and just
15 confirm for me that this is a transcript of the 18:30
16 confirmation hearing on the reorganization plan for
17 Davis Petroleum.

18 A. It -- it appears to be.

19 Q. March 9, 2006, do you see that?

20 A. Yeah. I mean, I have no reason to doubt 18:30
21 that it's a tran- -- an accurate transcript.

22 Q. Okay. And you --

23 A. I don't think I've ever read the transcript
24 of that hearing, but --

25 Q. You participated in that hearing by 18:31

DECLARATION UNDER PENALTY OF PERJURY

I, MICHAEL DIAMOND, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on October 17, 2007; that I have made such corrections as appear noted herein; that my testimony as contained herein, as corrected, is true and correct.

Dated this ____ day of _____,
200____, at _____, California.

MICHAEL DIAMOND

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken before
5 me at the time and place herein set forth; that any
6 witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand
9 which was thereafter transcribed under my direction;
10 that the foregoing transcript is a true record of
11 the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [x] was [] was not requested.

16 I further certify that I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date subscribed
20 my name.

21
22 Dated: _____

23
24 _____
25 Paula A. Pyburn
CSR No. 7304/RPR